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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

NORTHWEST ENVIRONMENTAL  
ADVOCATES, an Oregon non-profit  
corporation,

Civil No.: 3:12-cv-01751-HZ

**FINAL ORDER AND JUDGMENT**

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, a United States  
Government Agency,

Defendant,

and

STATE OF OREGON; OREGON WATER  
QUALITY STANDARDS GROUP; and THE  
FRESHWATER TRUST,

Intervenors-Defendants.

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Based on the Court's orders dated April 11, 2017 (ECF 149), December 12, 2018 (ECF 190), February 25, 2019 (ECF 197), June 11, 2019 (ECF 200), and August 27, 2019 (ECF 203), and the Court being fully advised in the premises,

**IT IS ORDERED, ADJUDGED, AND DECREED** that:

(1) Judgment is entered in favor of Plaintiff Northwest Environmental Advocates ("NWEA") on Claim 2 as applied to all temperature TMDLs listed in Table 3 of the Second Amended Complaint (ECF 11), which includes all TMDLs listed in paragraphs (2) and (3) below.

(2) Judgment is entered in favor of NWEA on Claims 1, 6, and 7 of the Second Amended Complaint (ECF 11), but only as applied to the following temperature TMDLs, as listed in Table 3 of the Second Amended Complaint:

<u>TMDL</u>	<u>Approval Date</u>
Willamette Basin <sup>1</sup> .....	Sept. 29, 2006
Umatilla Basin, Willow Creek Subbasin .....	Feb. 19, 2007
Umpqua Basin.....	April 12, 2007
Rogue Basin, Middle Rogue Subbasin & Bear Creek Watershed .....	Oct. 2, 2007
Willamette Basin, Molalla Pudding Subbasin .....	Dec. 31, 2008
Rogue Basin .....	Dec. 29, 2008
Middle Columbia/Hood, Miles Creek Subbasin .....	Feb. 5, 2009
Grande Ronde, Lower Grande Ronde Subbasin .....	Sept. 24, 2010

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<sup>1</sup> The Willamette Basin TMDL contains TMDLs for the Lower Willamette, Clackamas, Middle Willamette, North Santiam, South Santiam, Upper Willamette, McKenzie, Middle Fork Willamette, and Coast Fork Willamette subbasins.

Malheur Basin ..... Dec. 3, 2010  
 John Day Basin ..... Dec. 17, 2010

(3) Judgment is entered in favor of EPA and the intervenor-defendants on Claims 1, 6, and 7, but only as applied to the following temperature TMDLs:

<u>TMDL</u>	<u>Approval Date</u>
Rogue Basin, Applegate Subbasin.....	Feb. 11, 2004
Snake River, Hells Canyon.....	Sept. 9, 2004
Sandy Basin .....	April 14, 2005
Umatilla Basin, Walla Walla Subbasin.....	Sept. 29, 2005

(4) The Court hereby orders Oregon and the U.S. Environmental Protection Agency (“EPA”) to establish new TMDLs to replace the TMDLs listed in paragraphs (2) and (3) above, which shall include the same waterbodies and waterbody segments as the original TMDLs, except to the extent that those waterbodies or waterbody segments are no longer on Oregon’s approved list of impaired waters under Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d)(1). EPA shall complete its final agency actions approving or disapproving the replacement TMDLs by the dates listed below. Oregon shall submit TMDLs it establishes to EPA at least thirty days in advance of the dates listed below. If EPA disapproves any submitted TMDLs, it shall establish replacement TMDLs within 30 days of disapproval.

<u>TMDL</u>	<u>Deadline for EPA Approval or Disapproval</u>
Southern Willamette Subbasins .....	July 14, 2023
Mid-Willamette Subbasins.....	July 14, 2023
Lower Willamette Subbasins .....	July 14, 2023
Willamette River Mainstem and Major Tributaries....	Aug. 30, 2024
North Umpqua Subbasin.....	Aug. 30, 2024
South Umpqua and Umpqua Subbasins.....	Aug. 30, 2024
Applegate, Illinois, Lower Rogue, and	

Middle Rogue Subbasins .....	Oct. 17, 2025
John Day Basin .....	Oct. 17, 2025
Upper Rogue Subbasin .....	Oct. 17, 2025
Snake River – Hells Canyon .....	Dec. 4, 2026
Lower Grande Ronde, Imnaha, and Wallowa Basins ...	Dec. 4, 2026
Middle Columbia-Hood, Miles Creeks Basins .....	Dec. 4, 2026
Umatilla Basin—Walla Walla Subbasin.....	Nov. 28, 2027
Willow Creek Subbasin .....	Nov. 28, 2027
Malheur River Subbasins .....	Nov. 28, 2027

(5) Attached hereto as Attachment A is a map depicting the various basins and subbasins listed in Paragraph (4), together with the dates by which EPA must approve or disapprove TMDLs for those basins and subbasins. Attachment A also depicts the waterbodies to be included in the “Willamette Mainstem and Major Tributaries” TMDL(s) that EPA must approve or disapprove by August 30, 2024. The tributaries depicted in purple in Attachment A are located in the same subbasins for which EPA must approve or disapprove TMDLs by July 14, 2023. However, TMDLs covering those specific tributaries need not be approved or disapproved by EPA until August 30, 2024.<sup>2</sup>

(6) TMDLs covering the Willamette Mainstem and Major Tributaries shall be limited to the following river segments:

- Willamette River from the confluence of the Columbia River including the Willamette Channel and the Multnomah Channel to confluence of Coast and Middle Forks (approximately RM 187);
- Clackamas River up to River Mill Dam/Estacada Lake (approximately RM 26);
- Santiam River (all 12 miles);
- North Santiam River up to Detroit Dam (approximately RM 49);

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<sup>2</sup> Attachment A also depicts the Klamath basin, for which Oregon and EPA were previously ordered to establish a new temperature TMDL by September 30, 2019. *See* ECF 197. On October 1, 2019, EPA filed a notice with the Court that it had approved Oregon’s new temperature TMDL for that basin. *See* ECF 205.

- South Santiam River up to Foster Dam (approximately RM 38);
- Long Tom River to Fern Ridge Dam (approximately RM 26);
- McKenzie River to confluence with the South Fork McKenzie River (approximately RM 56);
- South Fork McKenzie River to Cougar Dam (approximately RM 4);
- Blue River to Blue River Dam (approximately RM 1.9);
- Middle Fork Willamette to Dexter Dam (approximately RM 17);
- Fall Creek to Fall Creek Dam (approximately RM 7);
- Coast Fork Willamette to Cottage Grove Dam (RM 30); and
- Row River to Dorena Dam (approximately RM 7.5)

(7) Vacatur of the TMDLs listed in Paragraphs (2) and (3) shall be stayed pending completion of replacement TMDLs as specified in Paragraph (4). However, this stay shall expire and each TMDL shall be automatically vacated 30 days after the corresponding deadline in Paragraph (4) for EPA's approval or disapproval, unless that date is extended by the Court.

(8) Beginning on the effective date of this order, Oregon and EPA shall file a joint status report every 120 days that advises the Court and NWEA of the status of replacement TMDLs required by paragraph (4). The status report shall state whether Oregon and EPA's work on the replacement TMDLs continues on-schedule, and, if not, informs the Court and NWEA of the nature and cause of the delay(s) or anticipated delay(s) and of Oregon and EPA's plan to remedy or minimize the delay(s).


(9) Pending completion of all replacement TMDLs required by paragraph (4) and Attachment A, the Court shall retain jurisdiction over any disputes that arise between the Parties during the reformulation and review of the new TMDLs, including any motion to extend the

duration of any stay, to extend the deadline for the issuance and/or approval or disapproval of any new TMDL, or for additional direction from the Court to ensure the replacement TMDLs are completed on time.

(10) Claims 3, 4, and 5 are denied as moot.

(11) The Court declines to enter judgment on Claims 8 and 9. Instead, the Court grants EPA's motion for voluntary remand on the Upper Klamath and Lost River Subbasins temperature TMDL and Willamette Basin mercury TMDL (ECF 89). The Willamette Basin mercury TMDL shall stay in place and will not be vacated. Pursuant to its order of February 25, 2019 (ECF 197), the Court orders EPA to complete its final agency action approving or disapproving a new Willamette Basin mercury TMDL no later than November 29, 2019, covering the same waters as the TMDL at issue in this case. If EPA disapproves Oregon's new Willamette Basin mercury TMDL, it shall establish a replacement TMDL within 30 days.

**IT IS SO ORDERED AND ADJUDGED**

  
\_\_\_\_\_  
Honorable Marco A. Hernandez  
UNITED STATES DISTRICT JUDGE

Submitted by,

BRICKLIN & NEWMAN, LLP

s/ Bryan Telegin

Bryan Telegin, OSB # 105253

EARTHRISE LAW CENTER

s/ Allison LaPlante

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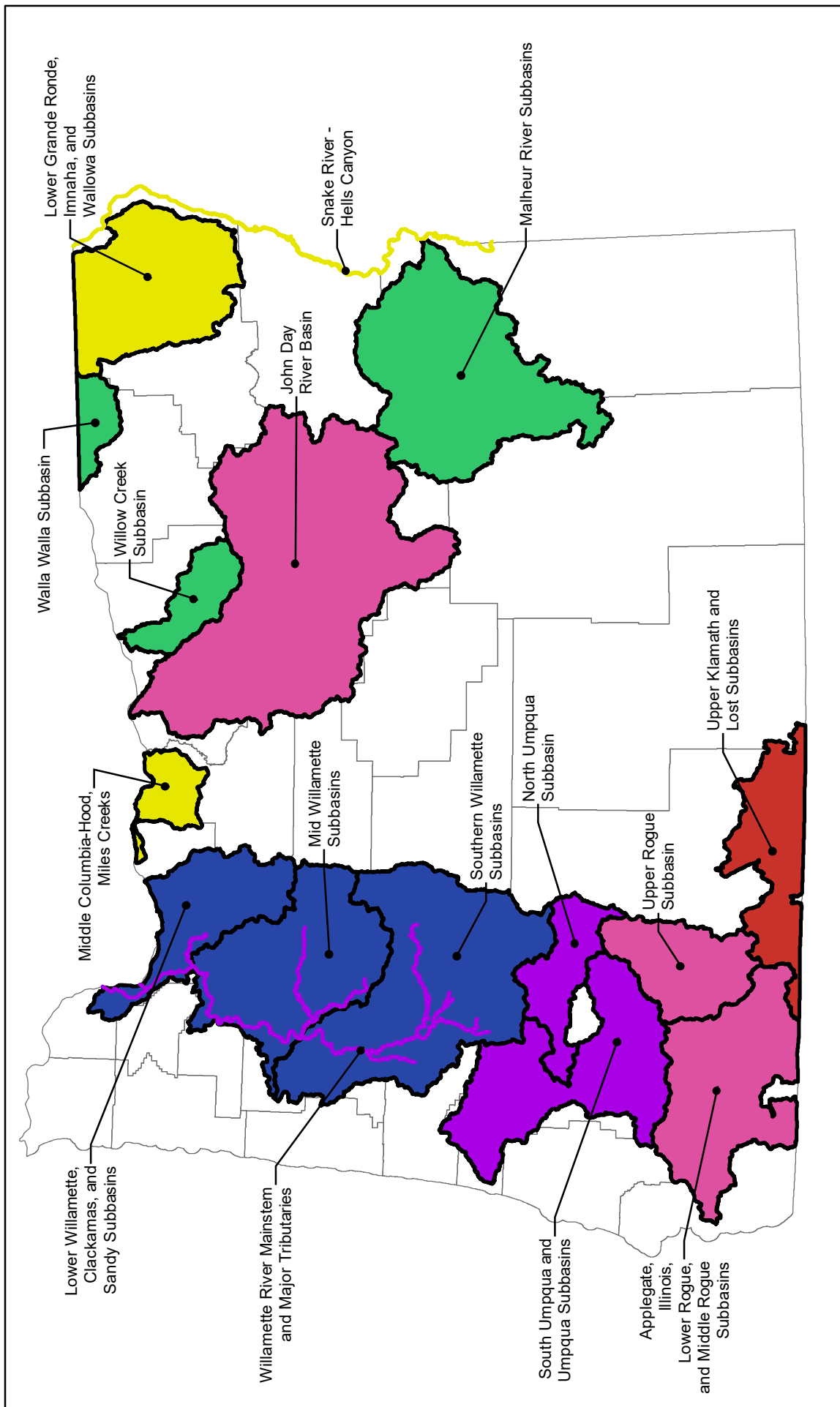
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(Attachment A on following page)

## **ATTACHMENT A**





## Legend

